

1 Neal A. Potischman (Bar No. 254862)  
Stephanie E. Lockwood (Bar No. 238215)  
2 DAVIS POLK & WARDWELL  
1600 El Camino Real  
3 Menlo Park, California 94025  
Telephone: (650) 752-2000  
4 Facsimile: (650) 752-2111  
Email: neal.potischman@dpw.com  
5 lockwood@dpw.com

6 Attorneys for Defendant  
TEKNI-PLEX, INC., sued herein as  
7 COLORITE PLASTIC COMPANY

8  
9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 PEPPER BEALL MAUPIN,

13 Plaintiff,

14 v.

15 COLORITE PLASTIC COMPANY,

16 Defendant.

CASE NO. CV-08-1513 MHP

)  
) **DEFENDANT TEKNI-PLEX, INC.'S**  
) **APPLICATION FOR LEAVE OF**  
) **COURT TO FILE A MOTION TO**  
) **DISMISS PRIOR TO THE INITIAL**  
) **CASE MANAGEMENT CONFERENCE,**  
) **OR, IN THE ALTERNATIVE, TO**  
) **ADJOURN THE DEADLINE TO MOVE**  
) **TO DISMISS OR TO ANSWER THE**  
) **COMPLAINT**

18 ) Complaint served: April 30, 2008

19 Pursuant to standing Order No. 4 of the Honorable Marilyn H. Patel, defendant Tekni-Plex,  
20 Inc., sued as Colorite Plastic Company ("defendant"), hereby requests leave to file a motion to  
21 dismiss the complaint in this action ("Complaint") pursuant to Federal Rules of Civil Procedure  
22 12(b)(6), 9(b), and 12(b)(1) for failure to state a claim upon which relief may be granted, for failure  
23 to plead her claims with the requisite particularity, for lack of subject matter jurisdiction, and for  
24 failure to comply with the procedural requirements of California Civil Code §§ 1780(c) and 1782 of  
25 the California Consumer Legal Remedies Act. Leave of Court is requested for the following  
26 reasons:

27 ///

1           1.       The above referenced case was assigned to Your Honor on May 14, 2008.

2           2.       The initial Case Management Conference in this case has been scheduled for July  
3 14, 2008.

4           3.       Currently, the deadline under the Federal Rules of Civil Procedure for defendant to  
5 move or to answer the Complaint is Monday, May 19, 2008.

6           4.       Defendant has been diligently working to prepare a motion to dismiss the  
7 Complaint, and had planned to file such motion on May 19, 2008.

8           5.       Defendant is aware that Your Honor's Standing Order Number 4 states: "Motions to  
9 dismiss shall not be filed before the initial Case Management Conference except by leave of  
10 Court."

11          6.       Defendant believes that its motion to dismiss may dispose of the Complaint or  
12 substantially narrow the scope of the litigation, which would serve the interests of judicial  
13 economy.

14          7.       Accordingly, defendant respectfully seeks leave to file a motion to dismiss in  
15 advance of the July 14, 2008 initial Case Management Conference.

16          8.       Should the Court grant defendant leave to file its motion to dismiss on May 19,  
17 2008, defendant expects that briefing will be complete prior to the scheduled initial Case  
18 Management Conference.

19          9.       In the alternative, defendant respectfully requests that the Court adjourn the deadline  
20 to move to dismiss or to answer the Complaint until ten days after the initial Case Management  
21 Conference.

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

1 Accordingly, defendant asserts that there is good cause for granting leave as requested in  
2 this application.

3  
4 Dated: May 15, 2008

Respectfully Submitted,

DAVIS POLK & WARDWELL

5  
6  
7 By: /s/ Neal A. Potischman  
Neal A. Potischman (Bar No. 254862)  
Stephanie E. Lockwood (Bar No. 238215)

8 Attorneys for Defendant  
9 TEKNI-PLEX, INC., sued as  
10 COLORITE PLASTIC COMPANY  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Neal A. Potischman (Bar No. 254862)  
Stephanie E. Lockwood (Bar No. 238215)  
2 DAVIS POLK & WARDWELL  
1600 El Camino Real  
3 Menlo Park, California 94025  
Telephone: (650) 752-2000  
4 Facsimile: (650) 752-2111

5 Attorneys for Defendant  
TEKNI-PLEX, INC., sued herein as  
6 COLORITE PLASTIC COMPANY

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11	PEPPER BEALL MAUPIN,	)	CASE NO. CV-08-1513 MHP
12		)	
12	Plaintiff,	)	<b>[PROPOSED] ORDER GRANTING</b>
13		)	<b>TEKNI-PLEX, INC.'S REQUEST FOR</b>
13	v.	)	<b>LEAVE OF COURT TO FILE A</b>
14	COLORITE PLASTIC COMPANY,	)	<b>MOTION TO DISMISS</b>
15		)	Complaint served: April 30, 2008
15	Defendant.	)	
16		)	
16		)	
17		)	

18  
19 The Court, having considered the application of defendant Tekni-Plex, Inc. for leave of  
20 Court to file a motion to dismiss prior to the Initial Case Management Conference currently  
21 scheduled for July 14, 2008, and GOOD CAUSE APPEARING THEREFOR,

22 Defendant's application for leave of Court to file their motion to dismiss on May 19, 2008  
23 is hereby **GRANTED**,

24 **IT IS SO ORDERED.**

25  
26 Dated: , 2008

27  
28 

---

HONORABLE MARILYN H. PATEL  
UNITED STATES DISTRICT COURT JUDGE

1 Neal A. Potischman (Bar No. 254862)  
Stephanie E. Lockwood (Bar No. 238215)  
2 DAVIS POLK & WARDWELL  
1600 El Camino Real  
3 Menlo Park, California 94025  
Telephone: (650) 752-2000  
4 Facsimile: (650) 752-2111  
Email: neal.potischman@dpw.com  
5 lockwood@dpw.com

6 Attorneys for Defendant  
TEKNI-PLEX, INC., sued herein as  
7 COLORITE PLASTIC COMPANY

8  
9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12	PEPPER BEALL MAUPIN,	)	CASE NO. CV-08-1513 MHP
13		)	
13	Plaintiff,	)	<b>[PROPOSED] ORDER GRANTING</b>
14		)	<b>TEKNI-PLEX, INC.'S REQUEST TO</b>
14	v.	)	<b>ADJOURN THE DEADLINE TO MOVE</b>
15	COLORITE PLASTIC COMPANY,	)	<b>TO DISMISS OR TO ANSWER THE</b>
15		)	<b>COMPLAINT</b>
16	Defendant.	)	Complaint served: April 30, 2008
17		)	
18		)	

19 The Court, having considered the request of defendant Tekni-Plex, Inc. to adjourn the  
20 deadline for defendant to move to dismiss or to answer the Complaint until ten days after the initial  
21 Case Management Conference, and GOOD CAUSE APPEARING THEREFOR,

22 Defendant's request to adjourn the deadline to move to dismiss or to answer the Complaint  
23 until ten days after the initial Case Management Conference is hereby **GRANTED**,

24 **IT IS SO ORDERED.**

25  
26 Dated: , 2008

27  
28 

---

HONORABLE MARILYN H. PATEL  
UNITED STATES DISTRICT COURT JUDGE